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2021.09

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Intellectual Property

Measures for the Administration of The List of Serious Law-breaking and Trust-breaking for market supervision and administration will come into force on September 1

Measures for the Administration of the List of Serious Violations and Trust-breaking in Market Supervision and Administration, will come into force on September 1, 2021. The Measures stipulates that: infringement of trade secrets, commercial slander, organization of false transactions and other acts of unfair competition that seriously undermine the order of fair competition, willful infringement of intellectual property rights, filing abnormal patent applications and malicious trademark registration applications damages social and public interests, those who engage in acts of seriously violating patent or trademark agency, if the circumstances are serious, shall be listed in the list of seriously violating law and trust-breaking.

Source: State Administration for Market Regulation

Intel's third invalidation application against FinFET core patent of Institute of Microelectronics of The Chinese Academy of Sciences was rejected

On September 3, China National Intellectual Property Administration issued a review decision No. 51731, it was ruled that the application for invalidation of invention patent NO. ZL201110240931.5, which was filed by Intel (China) Co., Ltd. on December 4, 2020, for the invention named "semiconductor device and fabrication Method, and fabrication method of semiconductor fin" of Institute Of Microelectronics Of The Chinese Academy Of Sciences, was maintained to be valid. It is reported that this is already the third invalidation of the patent filed by Intel.

Source: China National Intellectual Property Administration

The Supreme People's Court of China final ruled in the OPPO v. Sharp case clarified that China has global jurisdiction over SEP rates

In the appeal of jurisdiction objection in the standard essential Patent Licensing dispute between Sharp, Scienbzip Japan and OPPO Guangdong Mobile Communication Co., LTD, Shenzhen branch, The Supreme Court made a final ruling rejecting the appeal requests of Sharp and Scienbzip Japan.

The Court clarified the criteria for "proper connection" and noted that jurisdictional agreement between the parties was not a requirement condition for a particular court to have jurisdiction over and deal with a global license to a standard essential patent. It is appropriate for Chinese courts to rule on global licensing conditions for the standard essential patents involved, provided that the parties are willing to reach global licensing and the case has closer links with Chinese courts. This is the first time that China's top judicial authority has made it clear that Chinese courts have jurisdiction over global FRAND licensing conditions in standard essential patent litigation.

Source: IP Economy

BMW China will purchase Brilliance's Zhonghua brand for RMB 1.633 billion

On the morning of August 31st, the second creditors' meeting was held on the substantive merger and reorganization plan of 12 enterprises including Brilliance Group. All three proposals, including BMW China's acquisition of "China" automobile brand, were passed at the meeting. It is reported that BMW China will acquire zhonghua automobile brand for RMB 1.633 billion. Public information shows that as of November 20, 2020, the assets related to the production of "Zhonghua" automobile brand amounted to RMB 1.233 billion.

Source: IP Economy

Huya streaming platform was accused of trademark infringement, the court rejected all the plaintiff's claims in the first instance

In October 2020, Hangzhou Huya Company filed a lawsuit with The Binjiang District People's Court of Hangzhou against Guangzhou Huya Company, the operating subject of huya Live, a well-known live streaming platform, for trademark infringement, and applied to the court for behavior preservation. In January 2021, binjiang Court rejected the application for preservation. Recently, the court of first instance rejected Hangzhou Huya's lawsuit request. The reason is that the online marketing service provided by the defendant Guangzhou Huya through network broadcasting is not similar to the category 35 "advertising planning" service, and the accused logos such as "Huya Live Broadcasting" are not similar to the plaintiff's "Huya" trademark in terms of calling mode and meaning.

Source: IPhouse

New Bunren company v. China National Intellectual Property Administration invalidation of the trademark right of "New Bunren", the court rejected its appeal in the second instance

New Balance Sports Company filed an application for invalidation of the trademark "New Bunren" registered by New BALANCE (China) Sporting Goods Co., LTD., no. 7976197, and the China National Intellectual Property Administration ruled that the trademark "New Bunren" constituted a copy of the famous trademark "New BALANCE" of New BALANCE, and violated the provisions of the Second paragraph of Article 13 of the Trademark Law of 2001, so it was declared invalid. New Balance filed an administrative lawsuit with the Beijing Intellectual Property Court, and the first-instance court rejected its claim. Recently, the Beijing High People's Court made a second judgment on the case, rejecting New Balance's appeal and upholding the original judgment.

Source: IPhouse

The judgment on the case of infringement of trade secrets in the value of RMB 169 million enjoyed by Ningbo Boway was made

Since April 2019, a Zhejiang material Co., Ltd. recruited six core management and technical personnel of Boway by the way of high salary to obtain the technical information of Boway and carry out new projects with the virtual license value of trade secrets involved totaling more than RMB 169 million. In this regard, Yinzhou District People's Procuratorate made a prosecution to Yinzhou District People's Court, the court determined that the six defendants obtained the business secrets of the right holders by improper means, which caused especially serious consequences and constituted the crime of infringing on business secrets, and sentenced the six defendants to fixed-term imprisonment and fine. The case is the largest criminal case involving intellectual property rights in Ningbo so far.

Source: Ningbo Yinzhou District People's Court

Linux lawsuit: 20 years later, SCO vs IBM may finally be ending

On the afternoon of August 30, TSG Group, representing SCO, reached a settlement with IBM, promising that SCO would drop and never again claim that Linux violated Unix or Unixware intellectual property rights. IBM will also pay \$14.25 million (RMB 92.17 million) in full compensation to SCO, which brought to an end to this nearly two decades of intellectual property litigation.

Source: ZD Net

US Tenth Circuit claimed Lanham Act applies to foreign activity

On August 24, US Court of Appeals for the Tenth Circuit upheld the \$113 million damages awarded to plaintiffs in response to a District Court decision that the Lanham Act applied to foreign sales activities. The 10th Circuit rejected the defendant's argument that the United States Lanham Act did not have extraterritorial jurisdiction to apply to overseas activities, holding that the District court was correct in holding that Fuchs and ABI had personal jurisdiction under the Federal Rules of Civil Procedure.

Source: [ManagingIP](#)

DPC rendered WhatsApp GDPR fine of 267 million dollars

WhatsApp, the facebook-owned messaging service, has been fined a record €225m (267 million dollars) by Data Protection Commission for breaches of the European privacy laws and regulations recently.

Source: [Cyber Threat Intelligence](#)

Competition Law

The Propaganda Department Answers the Press Expressing It Makes No Exception to the Platforms Anti-monopoly

On August 26, 2021, the Propaganda Department of the CPC Central Committee issued “*The Historical Mission and Action Value of the CPC of China*” and meets the press. In response to the statement that “the anti-monopoly measures in China are deliberately targeting the private enterprises” from media, the spokesman said that antitrust is a common practice in market economy countries and an important regular work of the Chinese government. It was also said that regulation and development should be followed at the same time for strengthening the supervision of large science and technology enterprises such as internet platforms and preventing monopoly and disorderly capital expansion. The regulations and laws targeting platforms are equally applicable only for violations, with no discrimination among state-owned enterprises, private enterprises and foreign-funded enterprises. ([More](#))

The Former Director of SAMR: Strengthening Anti-monopoly and Anti-unfair Competition Enforcement

On August 31, 2021, at the CPPCC meeting, the former director of the State Administration for Market Regulation (“SAMR”), Zhang Mao, said that since the 18th CPC National Congress, Market Supervision Authorities have strengthened anti-monopoly and anti-unfair competition enforcement, aiming to ensure various market players can participate in market competition fairly, which effectively maintains the market environment of fair competition. The next step is to strengthen law enforcement in key areas such as platform economy, high-tech, intellectual property rights & medicine and education; improve high-standard competition legal rules; implement high-quality competition policies; improve the capability of law enforcement; and strengthen compliance guidance for enterprises. ([More](#))

Opinions on Strengthening Anti-monopoly and Further Promoting the Implementation of Fair Competition Policy Passed

On August 30, 2021, General Secretary Xi Jinping presided over the 21st meeting of the Central Committee for Comprehensively Deepening Reform, and the *Opinions on Strengthening Anti-Monopoly and Promoting Fair Competition Policy* was deliberated and passed. Xi stressed that strengthening anti-monopoly and deepening the implementation of fair competition policies are the inherent requirements for improving the socialist market economy system. For prominent problems such as brutal growth and

disorderly expansion of some platform enterprises, China will intensify anti-monopoly supervision, investigate and punish monopoly and unfair competition of relevant platform enterprises in accordance with the law. ([More](#))

SAMR Issues the Administrative Punishment Decision against Yunnan Branch of China Aviation Oil Co., Ltd.

On August 31, 2021, SAMR issued the administrative punishment decision made by Yunnan Administration for Market Regulation (“**Yunnan AMR**”) against the abuse of dominance by Yunnan Branch of China Aviation Oil Co., Ltd. After investigation, it was found that the company holds full dominance in the aviation kerosene supply and filling service market in Yunnan Province and its practice of charging additional third-party fees such as road transportation fees in addition to the normal charge of aviation kerosene is in violation of Article 17 of the *Anti-monopoly Law*. Therefore, Yunnan AMR ordered the company to stop illegal behavior, and totally fined and confiscated around CNY 2.34 million. ([More](#))

Guangdong AMR Corrects the Administrative Monopoly Behaviors of Shenzhen Municipal Transport Bureau and the Traffic Police Bureau

On August 24, 2021, the Administration for Market Regulation of Guangdong Province (“**Guangdong AMR**”) issued a notice stating that it had suggested Shenzhen Government requiring Shenzhen Municipal Transport Bureau and the Traffic Police Bureau of the Shenzhen Municipal Public Security Bureau to stop administrative monopoly behavior in the May of 2020, abolish or modify the relevant documents and eliminate the relevant consequences. After investigation, Shenzhen Municipal Transport Bureau had issued a series of documents since 2012, illegally adding administrative license, and restricted non-local operators to enter the local market to engage in sand and muck transportation. In the July of 2018, Shenzhen Municipal Traffic Police Bureau illegally authorized the vehicle safety inspection result issued by the industry association as a precondition for the pass, which raise the threshold for market entry. ([More](#))

CMA Finds Competition Concerns Remain over the Merger Between JD Sports and Footasylum

On September 2, 2021, the Competition and Markets Authority (“**CMA**”) issued a provisionally report saying that it found the merger between JD Sports and Footasylum, the UK sports equipment retailers, would lead to competition concerns. Previously, JD Sports appealed to the Competition Appeal Tribunal, which remitted the case back to the CMA for reconsideration. After reconsideration, CMA alleges that the business model of sports fashion products focuses more on online retail under the impact of COVID-19, and JD Sports and Footasylum are close competitors, whose merger means customers could find themselves facing higher prices, fewer discounts and less choice of products in store. It could also result in the merged company investing less in improvements to customer service. ([More](#))

Apple Faces Antitrust Case in India for Abusing Dominant Position in the Apps Market

On September 2, 2021, it was reported that Apple Inc is facing an antitrust challenge in India for allegedly abusing its dominant position in the apps market by forcing developers to use its proprietary in-app purchase system. The Indian case was filed by a non-profit group which argues Apple’s fee of up to 30 per cent hurts competition by raising costs for app developers and customers, while also acting as a barrier to market entry. The Competition Commission of India will review the case and could order its investigations arm to conduct a wider probe. ([More](#))

FAS Issues a Warning to Apple

On August 30, 2021, it is reported that the Federal Anti-monopoly Service of Russia (“FAS”) has issued a warning to Apple because the company prohibits software developers from informing buyers of applications in the App Store about alternative payment methods. Previously, the FAS received applications from users of devices based on iOS and application developers in this regard. Applicants note that in some cases it is cheaper to buy a product, such as an e-book, on the seller's website, and then start reading in the application on an iPhone or iPad, logging in under your account. This is due to the fact that Apple provides a commission from 15% to 30% on each payment in the App Store. But software developers cannot inform users about the possibility of purchases outside the App Store, according to Apple's rules. Practices above by Apple restricts developers in independent behavior, which negatively affects competition and may lead to an increase in prices for developers' products. The company must fulfill the rectification no later than September 30, 2021. ([More](#))

Russia Fines Booking.com about CNY 113 Million for Abusing Dominant Position

On August 27, 2021, it is reported that the FAS said that it had imposed a fine of USD 17.5 million (about CNY 113 million) on Booking.com for abusing its dominant position in the Russian market for the provision of services. It accused the Amsterdam-based travel site of having imposed on hotels and hostels “the obligation to provide and comply with price parity”, which means that they could not price their services in other sales channels lower than on the Booking.com aggregator. The practice damaged the market competition and violated the interests of the hotels. ([More](#))

Cybersecurity and Data Protection

CCA Supports the Consumer Civil Public Interest Litigation Filed by Chongqing CRPC

On September 3, 2021, the China Consumer Association (“CCA”) publicly expressed support for the consumer civil public interest litigation filed by the Chongqing Consumer Rights Protection Commission (“Chongqing CRPC”) on the illegal leakage of Chongqing Yangqi Enterprise Marketing Planning Co., Ltd. The defendant illegally leaked a lot of consumer personal information through its public account article, seriously infringing the social and public interests. The litigation, brought for trial on September 2 and supported by the First Branch of Chongqing Municipal People's Procuratorate, is the first consumer civil public interest litigation in Chongqing. At the same time, the appeal of compensating loss by conducting consumption public interest publicity activities is also significantly innovative in the field of consumer civil public interest litigation. ([More](#))

Five Departments Jointly Interview the Online Car-hailing Platforms to Ensure Users' Information and Data Security

On September 1, 2021, the Ministry of Transport, together with the Cyberspace Administration of China, the Ministry of Industry and Information Technology (“MIIT”), the Ministry of Public Security, the Ministry of Public Security, the State Administration for Market Regulation and other member units of the Inter-ministerial Joint Conference on coordinated supervision of new forms of transportation, jointly held joint interviews with 11 online car-hailing platform companies including Meituan Travel, Caocao Travel, Gaud and Didi Travel. According to the interview requirements, all platform companies should strictly implement the relevant laws and regulations on users' information and data security, conscientiously fulfill the responsibility of personal information protection, and shall not provide users' personal information to third parties without consent; establish a relevant data security management system in

accordance with the law, and take necessary security technology and management measures in each link of users' data processing. It is stressed that all platform companies should speed up the screening and rectification, carry out compliant operations legally, and promote the standardized, healthy and sustainable development of the online car-hailing industry. ([More](#))

MIIT: the Cybersecurity Threat and Vulnerability Information Sharing Platform in Operation

On September 1, 2021, the Cybersecurity Bureau of the MIIT released a notice stating that, in order to implement the relevant requirements of the *Administrative Provisions on Security Vulnerabilities of Cyber Products* ("Provisions"), the cybersecurity threat and vulnerability information sharing platform ("Platform") organized by the Bureau was officially put into operation on September 1, 2021. According to the *Provisions*, cyber product providers shall timely submit relevant vulnerability information to the platform, and the vulnerability collection platforms and other organizations or individuals that find vulnerabilities are encouraged to report vulnerability information to the Platform. The Platform concludes the professional databases of security vulnerabilities of general cyber products, industrial control, mobile Internet App, and Internet of vehicles, etc., which supports the technical evaluation of cyber product's security vulnerabilities, and urge cyber product providers to repair and reasonably release their own product security vulnerabilities in a timely manner. ([More](#))

Regulations on the Promotion of Digital Economy in Guangdong Province in Effect

On September 1, 2021, the *Regulations on the Promotion of Digital Economy in Guangdong Province* ("Regulations") came into effect. The *Regulations*, the first local regulations to promote the development of the digital economy since the state has released the statistical classification of the digital economy and its core industries during the 14th Five-Year Plan period, focus on the two cores of "digital industrialization and industrial digitalization", driven by the two main elements of "data and technology", and build an overall framework structure of "two cores, two elements, one support and one guarantee". The *Regulations* defines the principles and key points of the development of digital economy, and the responsibilities of the government and departments; clarify the direction of digital industrialization, and focus on cultivating and developing digital industrial clusters. ([More](#))

Several Policies and Measures for Shanghai to Promote Urban Digital Transformation Put into Effect

On September 1, 2021, *Several Policies and Measures for Shanghai to Promote Urban Digital Transformation* ("Measures") officially implemented. The *Measures* put forward 27 policies, systems and safeguard measures in five aspects. With the regard to establish a new mechanism to comprehensively improve the efficiency of governance and digital management, the *Measures* stipulates that: the first is to carry out a pilot program for automated government approval and regulatory reforms; the second is to let the public data to empower grassroots governance; the third is to establish a data element transaction and circulation system and promote the establishment of the Shanghai Data Exchange and explore the implementation path of data assetization; the fourth is to improve the rules for the use of biometric information such as human faces, explore the establishment of a city-wide face recognition unified authentication platform and related authentication mechanisms, unify the city's face recognition application management standards, and conduct hierarchical and classified management of different collection subjects. ([More](#))

Zhejiang Notifies 85 Apps Illegally Collecting and Using PI

On August 29, 2021, the Cyberspace Administration of China issued a notice stating that, recently, in response to the phenomena in violation of the rights and interests of personal information ("PI") such

as illegal accessing to PI by App, collecting PI beyond the scope and over-demand authorization with people's strong complaints, the App Special Governance Working Group for the Illegal Collection and Use of PI of Zhejiang Province organized to detect the PI collection and use of some Apps in common types of online games, utilities, instant communication, which are widely used by the public, according to the *Cybersecurity Law*, the *Data Security Law*, the *Measures for the Determination of the Collection and Use of Personal Information by Apps in Violation of Laws and Regulations*, the *Provisions on the Scope of Necessary Personal Information Required for Common Types of Mobile Internet Applications* and other laws and regulations. After detection, "Cute-man Big Fight" and other 84 Apps illegally collected and used PI with the main problems of collecting and using PI without consent, violating the principle of necessity and existing security loopholes on information leakage, etc. ([More](#))

Chongqing New Oriental Education and Training Institution Fined for Illegally Collecting and Using Consumers' Information

On August 28, 2021, the National Enterprise Credit Information Publicity System shows that the Yubei District Branch of Chongqing New Oriental Education and Training School Co., Ltd. illegally collected and used 1053 pieces of consumers' personal information without consent, which is suspected of violating the relevant provisions of the *Law on the Protection of Consumer Rights and Interests*, to the detriment of the right of consumers' personal information to be protected legally. According to the illegal facts, the Administration for Market Regulation of Chongqing made the administrative punishment, fining the company CNY 340,000 and ordering it to eliminate the impact. ([More](#))

One Sentenced to Three Years in Prison for Using the “Facial Attractiveness Detection” Software to Steal Users’ Photos

Recently, the Fengxian District People's Court of Shanghai made the first-instance judgment on the case of using the “facial attractiveness detection” software to steal user information. It is found that, from June to September 2020, Li disguised a mobile phone software developed with the function of illegally stealing the album photos of installers as a “facial attractiveness detection” software and provided free download, with the consequences of stealing a total of 1751 photos of installers, part of that contained face information, natural person name, ID number, home address and other more than 100 citizens' personal information. In addition, in February 2021, Li shared a “database” brought from the dark web containing household registration information, lending information and other contents to owner exchange group, to the detriment of the privacy rights of unspecified citizens and the social and public interests. The court sentenced Li to be guilty of infringing on citizens' personal information, sentenced to fixed-term imprisonment for three years and suspended for three years, and fined 10,000 yuan. ([More](#))

IE DPA Fines WhatsApp € 225 Million for Violations of GDPR Transparency Obligations

On September 2, 2021, the Data Protection Commission (“DPC”) has announced a conclusion to a GDPR investigation it conducted into WhatsApp Ireland Ltd. The DPC's investigation commenced on December 2018 and it examined whether WhatsApp has discharged its GDPR transparency obligations with regard to the provision of information and the transparency of that information to both users and non-users of WhatsApp's service. This includes information provided to data subjects about the processing of information between WhatsApp and other Facebook companies. Following a lengthy and comprehensive investigation, the DPC submitted a draft decision to all Concerned Supervisory Authorities, but consensus was failed to reach, which triggered the dispute resolution process. On 28 July 2021, the European Data Protection Board adopted a binding decision containing a clear instruction according

to that the DPC has imposed a fine of € 225 million on WhatsApp. In addition, the DPC has also imposed a reprimand along with an order for WhatsApp to bring its processing into compliance by taking a range of specified remedial actions. ([More](#))

Swiss Approves Use of European Commission's SCCs

On August 31, 2021, Switzerland's Federal Data Protection and Information Commissioner ("FDPIC") announced it will recognize the European Commission's updated standard contractual clauses ("SCCs") as a data transfer mechanism. FDPIC noted this approval is only granted if "necessary adaptations and amendments are made" to level with Swiss law. ([More](#))

Facebook, Twitter and WhatsApp Fined in Russia for Violations of Data Localization

On August 26, 2021, Russian media watchdog Roskomnadzor issued a statement confirming that Moscow's Tagansky Court had slapped steep fines on three American social platforms, Twitter, WhatsApp and Facebook, about \$230,000, \$200,000 and \$54,000 for violating data localization requirements. Under the rules established in 2015, tech giants must process Russian users' data on servers within the country, rather than sending it abroad in the first instance. According to Roskomnadzor, to date, the storage of personal data of Russian users has been localized by about 600 representative offices of foreign companies in the Russia, including Apple, Microsoft, LG, Samsung, PayPal, Booking.com and others. However, the three US firms have continually refused to abide by the rules, and both Twitter and Facebook have been previously fined for breaches. The regulator began slowing access to Twitter's servers in the country earlier this year, over claims it was failing to remove banned content, and the firm is understood to now be working with officials to meet the takedown requests. ([More](#))

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